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| IN RE |) | CASE NO. 10-53739 |
| John H. Gallagher, III |) | |
| Christine N. Gallagher |) | |
| |) | |
| Debtors |) | |
| |) | |
| John H. Gallagher, III and Christine N. |) | Chapter 13 |
| Gallagher |) | |
| 12040 Brosius |) | |
| Garrettsville, OH 44231 |) | JUDGE MARILYN SHEA-STONUM |
| |) | |
| Plaintiffs |) | |
| vs. |) | |
| |) | Adv. Proc. No. |
| J.P. Morgan Chase Bank |) | |
| c/o James Dimon, CEO |) | COMPLAINT OBJECTING TO |
| 270 Park Avenue, Ste 12 |) | SECURED STATUS OF J.P. MORGAN |
| New York, NY 10017 |) | CHASE BANK AND AVOIDING |
| |) | JUNIOR MORTGAGE |
| Defendants |) | |

7. Plaintiffs have a 1st mortgage on the 12040 Brosius Road, Garrettsville, OH 44231 property in the approximate sum of \$61,049.00 with Wells Fargo Bank.

8. Defendant J.P. Morgan Chase Bank is the holder of a 2nd mortgage lien on the 12040 Brosius Road, Garrettsville, OH 44231 property with a balance of approximately \$25,000.00.

9. Plaintiffs' Chapter 13 Plan provides for payment of Defendant J.P. Morgan Chase Bank's second mortgage as an unsecured claim and paid at the rate of 10%.

10. § 1322(b)(2) of the U.S. Bankruptcy Code permits a Debtor to modify the rights of holders of unsecured claims.

11. Taking into account that Defendant J.P. Morgan Chase Bank's second mortgage is wholly unsecured based upon the value of Plaintiffs' residence being less than the 1st mortgage lien, Defendant J.P. Morgan Chase Bank's claim for the second mortgage is not an allowed secured claim pursuant to §506(a) and Defendant J.P. Morgan Chase Bank must be paid for the second mortgage as an unsecured claim at the unsecured rate of Debtors' Plan and the mortgage lien voided pursuant to § 506(d).

WHEREFORE, Plaintiffs prays the Court for an Order declaring that Defendant J.P. Morgan Chase Bank's second mortgage be classified as a wholly unsecured claim and for an Order voiding the 2nd mortgage lien of J.P. Morgan Chase Bank pursuant to § 506(d).

/s/ Wayne W. Sarna
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